

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. ~~77-1320~~

ROGER WILLIAMS,
Petitioner

v.

STATE OF NORTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF THE STATE OF NORTH CAROLINA

March, 1978

Barry T. Winston
311 W. Rosemary Street
Chapel Hill, N.C. 27514

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Attorneys for Petitioner

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The Petitioner, ROGER WILLIAMS, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the North Carolina Court of Appeals rendered in these proceedings on November 6, 1977; said judgment and opinion being affirmed by the Supreme Court of North Carolina on December 19, 1977.

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals is attached hereto and appears at Appendix A, infra., pp. A1-A8. The Supreme Court of North Carolina without opinion dismissed the Petitioner's Appeal and Denied his Petition for Discretionary Review by judgment which is attached hereto and appears at Appendix B, infra., p. A9.

JURISDICTIONAL STATEMENT

The Judgment of the Supreme Court of North Carolina dismissing the Petitioner's Appeal and denying his Petition for Discretionary Review was entered on December 19, 1977. This Petition for Certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this honorable Court is invoked pursuant to 28 U.S.C. §1257 (3).

QUESTION PRESENTED

The Petitioner's lead counsel prior to the calling of the Petitioner's case for trial in the Superior Court of Wilkes County, North Carolina timely filed a motion for a Continuance of the Petitioner's trial based upon his simultaneously required presence in Orange County, North Carolina as the Attorney of record for an incarcerated, indigent Defendant tried for Attempted Armed Robbery. The motion for a Continuance filed in the Petitioner's case was denied and the Petitioner was tried for First Degree Murder without his head counsel being present to conduct his trial. The question which thereby arises is as follows:

Whether the actions of the Trial Judge in denying the Petitioner's Motion for a Continuance denied the Petitioner his right to due process of law as provided by the Fifth and Fourteenth Amendments to the Constitution of the United States and his right to have the assistance of Counsel selected and retained by him as provided by the Sixth and implemented by the Fourteenth Amendments to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment V:

"No person shall. . .be deprived of life, liberty, or property without due process of law. . ."

Constitution of the United States, Amendment VI:

"In all criminal prosecutions the accused shall enjoy the right to. . .and to have the assistance of counsel for his defense."

Constitution of the United States, Amendment XIV §1:

". . .nor shall any state deprive any person of life, liberty, or property without due process of law; . . ."

Constitution of North Carolina, Article I, §23:

"In all criminal prosecutions, every person charged with crime has the right to. . .have counsel for defense. . ."

STATEMENT OF FACTS

The facts relevant to the question presented by this Petition are uncontested and therefore may be introduced to the Court in a summary fashion.

This is a criminal action arising in Wilkes County, North Carolina where the Petitioner was arrested and charged in a warrant dated September 11, 1976 with the offense of First Degree Murder. On October 4, 1976 the Petitioner, having been released on bond, traveled to Chapel Hill, Orange County, North Carolina and there discussed his case with Barry T. Winston, a duly licensed attorney. Following their discussion the Petitioner retained and employed Mr. Winston as his lead counsel for the purpose of representing him in the criminal matter then pending against him. The Petitioner also retained as secondary counsel Mr. Max Ferree and Mr. John Hall of the Wilkes County Bar.

On October 15, 1976, Barry T. Winston traveled to Wilkes County and there appeared as counsel of record on behalf of the Petitioner at a Preliminary Hearing held in regard to this matter. Subsequent to the Preliminary Hearing a Bill of Indictment charging the Petitioner with First Degree Murder was submitted to the Wilkes County Grand Jury in November of 1976 and the indictment was returned a true Bill. During the period between his having been retained as primary counsel and the Petitioner's trial, Attorney Winston conducted numerous in-depth interviews with the Petitioner and interviewed numerous witnesses involved in the Petitioner's case.

On December 22, 1976 Attorney Barry T. Winston, having been advised that the District Attorney for Wilkes County had calendared the Petitioner's case for trial, timely filed a written Motion of Continuance of the Petitioner's trial. In substance, this Motion stated that he (Attorney Winston) was counsel of record for the Petitioner; that he had been advised that the District Attorney had calendared this case for trial on Monday, January 3, 1977; that the Petitioner was at that time free on bond; that he (Attorney Winston) had, in September of 1976, been

appointed to represent one Frank Haskins in Orange County Superior Court on an Attempted Armed Robbery charge; that Haskins was and had been in jail since his arrest in September, unable to make bond, and did not want a continuance of his case; that the Haskins case was also calendared for trial in Orange County Superior Court on January 3, 1977; that the Petitioners' case had been continued once before at counsel's request because of a similar conflict; that the Wilkes County District Attorney, having been apprised in advance of Attorney Winston's irreconcilable conflict, refused to agree to a further continuance; that Attorney Winston would be able to appear at the February 14, 1977, session of Wilkes County Superior Court and would be ready for trial at that time.

The Petitioner's case was called for trial in Wilkes County Superior Court on Wednesday, January 5, 1977; court having been cancelled on January 3 and 4 due to inclement weather. At that time the Petitioner's secondary attorneys, Messrs. Max Ferree and John Hall, were present in Court. Upon the calling of this case for trial, Attorney Ferree orally moved for a continuance on the same grounds set forth in Attorney Winston's written Motion. Mr. Ferree stated that he had talked with Mr. Winston over the telephone the evening before (January 4, 1977) and that in this conversation Mr. Winston stated that the Haskins armed robbery trial had begun in Orange County Superior Court on January 3, 1977 and that the trial would consume the remainder of the week. The Trial Judge, after considering Attorney Winston's Motion for a Continuance as such was presented both in writing and orally by Attorney Ferree, denied the motion and proceeded with the Petitioner's trial.

On January 5, 1977, during the morning recess of Orange County Superior Court, Attorney Winston requested the Judge Presiding at the Haskins trial to call the Judge Presiding in Wilkes County hearing the Petitioner's case and inform the Wilkes County Judge that Mr. Winston was present in Orange County trying the Haskins Armed Robbery case and inquire as to whether that fact created any problems. The Judge Presiding in Wilkes County responded to this message

by saying, "No problems, we are trying the Williams' (Petitioner's) case without Mr. Winston."

At his trial in Wilkes County the Petitioner entered a plea of not guilty and a jury trial occurred. On January 7, 1977 the jury hearing the Petitioner's matter returned a verdict of guilty of murder in the second degree and an active prison sentence of not less than 30 years nor more than 35 years was imposed. The Petitioner in open Court gave notice of Appeal to the North Carolina Court of Appeals and duly prepared and presented his appeal to that Court. Among the assignments of error and questions presented to the Court of Appeals was the question presented in this Petition. The North Carolina Court of Appeals overruled this assignment of error and affirmed the Judgment of the Trial Court. Following the decision and opinion of the North Carolina Court of Appeals, the Petitioner gave notice of Appeal to the Supreme Court of North Carolina and in the alternative filed a Petition in that court seeking discretionary review of the decision and opinion of the Court of Appeals. The Supreme Court of North Carolina dismissed the Petitioner's appeal and denied his Petition seeking discretionary review without opinion on December 19, 1977. On December 27, 1977 the Judgment of the Wilkes County Superior Court was certified and the Petitioner was taken into custody to begin his 3035 year sentence.

REASONS FOR GRANTING THE WRIT

THE NORTH CAROLINA COURT OF APPEALS HAS DECIDED THE QUESTION PRESENTED HEREIN IN A MANNER NOT IN ACCORD WITH THE CONSTITUTION OF THE UNITED STATES AND THE APPLICABLE DECISIONS OF THIS COURT.

The Sixth Amendment to the Constitution of the United States provides in pertinent part that the accused in all criminal prosecutions shall enjoy the right to have the assistance of counsel for his

defense. This right along with all of the other rights set forth in the Sixth Amendment is guaranteed to all criminal defendants whether they be tried in the Federal or State Courts. As enunciated by this Court in Faretta v. California, 422 N.S. 806 (1975), the rights set forth in the Sixth Amendment, being so very basic to our adversary system of criminal justice, are part of Due Process of Law that is guaranteed by the Fourteenth Amendment to defendants facing charges in the criminal courts of the various states.

Throughout the years the scope of the Sixth Amendment right to counsel has been expanded by the decisions of this Court. Thusly, this right is now enjoyed by all criminal defendants facing imprisonment whether they be indigent or of means. In the matter presently before the Court, the right which the Petitioner sought to exercise was his right to be heard through his own privately retained attorney. This right has steadfastly been recognized by this Court even before such landmark cases as Gideon v. Wainwright and Powell v. Alabama. The case of Chandler v. Fretag, 348 U.S. 3 (1954) serves as an example of this contention. In the Chandler case, decided prior to Gideon, this court stated that there was a clear distinction between an accused asking a trial judge to furnish him counsel and an accused asking for a Continuance so that he could obtain his own. The Court went on to state that regardless of whether the Petitioner (Chandler) would have been entitled to the appointment of counsel, his right to be heard through his own privately retained counsel was unqualified. (Emphasis added). This principle as espoused in Chandler, supra, served as the authority for this Court when they stated in the case of In re Groban, 352 U.S. 330 (1957), as follows:

It is clear that a Defendant in a State criminal trial has an unqualified right, under the Due Process Clause, to be heard through his own counsel."

Similar language can be found in other decisions of this Court such as House v. Mayo, 324 U.S. 42 (1947) where the court stated that persons charged with the

commission of crimes enjoyed the Constitutional right to a fair trial with the aid and assistance of counsel whom he or she had retained.

The Supreme Court of North Carolina in past decisions dealing with the question now before this Court has set forth basic principles similar to the language of the above mentioned cases. For example, in the case of State v. Gibson, 229 N.C. 297 (1948), the Supreme Court of North Carolina stated:

"Both the state and federal Constitutions guarantee to every man the right to be represented in criminal prosecutions by counsel whom he has selected and employed." Citing U.S. Const., Amend XIV. N.C. Const. Art. I, §23, U.S. ex. rel. Mills v. Ragan, D.C., 77 F. Supp. 15.

Numerous other decisions of the Supreme Court of North Carolina can be enumerated which stand for the same basic proposition.

The North Carolina Court of Appeals in their decision and opinion on the question now before this Court ignored the prior decisions of this Court including the interpretations given those decisions by the Supreme Court of North Carolina and placed limitations and qualifications on a right which this Court previously characterized as unqualified. In so doing the North Carolina Court of Appeals saw no error, Constitutional or otherwise, in trying the Petitioner without his primary counsel being present. The Court saw no error in denying the Petitioner the skills and extensive pre-trial preparation of his primary counsel.

In conclusion, the Petitioner would like to call the Court's attention to the language of this Court in the case of Powell v. Alabama, 287 U.S. 45 (1932). In that case, the Courts attention was focused on a proper balance between the desire for the prompt and efficient administration of justice and the individual rights of those accused of crime. In examining these noble, but sometimes inconsistent, objectives, the Court stated as follows:

"It is true that great and inexcusable delay in the enforcement of our criminal law is one of the grave evils of our time. The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result, the defendant charged with a serious crime must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of justice, but to go forward with the haste of the mob."

While it may be true that defendants in criminal prosecutions will not be afforded the right to be represented by his own counsel in situations where the exercise of this right occurs in a manner calculated to obstruct the orderly procedure of the Courts, such principle has no applicability to the Petitioner. The Petitioner in the instant case timely exercised his right to select counsel when he retained Attorney Winston some 3 months prior to trial. Furthermore, it would be greatly unjust and unreasonable to charge the Petitioner with his primary attorneys court schedule conflict. Apparently, none of this made any difference to the North Carolina Court of Appeals when they decided that in the instant case, the Petitioner's Sixth Amendment rights must yield. In so deciding, the Court of Appeals failed to recognize the holding of this Court in the case of Johnson v. Zerbst, 304 U.S. 458 (1938) where it was stated that the Sixth Amendment stands as a constant admonition that if the Constitutional safeguards it provides be lost, justice will not still be done.

CONCLUSION

For the reasons set out above, it is respectfully submitted that the Petitioner herein was denied certain vital constitutional rights affecting the integrity of the fact finding process and for this reason a Writ of Certiorari should issue to the North Carolina Court of Appeals to review their decision and opinion entered in this case.

Respectfully submitted.

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NO. 7723SC423
NORTH CAROLINA COURT OF APPEALS
Filed: 16 November 1977

STATE OF NORTH CAROLINA

v. Wilkes County
ROGER WILLIAMS No. 76CR6507

Appeal by defendant from Crissman, Judge. Judgment entered 7 January 1977 in Superior Court, Wilkes County. Heard in the Court of Appeals 18 October 1977.

Upon a plea of not guilty, defendant was tried on a bill of indictment charging him with the murder of Jimmy Lee Wilson on 11 September 1976. Evidence presented by the State tended to show:

Deceased was the former husband of Brenda Williams, wife of defendant. Deceased and Brenda were married on 1 March 1965 and had one child, Richard. Following a custody hearing, an order was entered on 9 September 1976 awarding Richard's custody to deceased effective at 12:00 noon on Saturday, 11 September 1976.

On that date, deceased, his wife and their child, together with David and Helma Wilson, went to the residence of defendant to pick up Richard. The Wilsons were in the front seat while deceased, his wife and child were in the back seat. Upon stopping the automobile David Wilson got out on the driver's side and observed defendant and one Plato Shepherd sitting in chairs in the carport.

Defendant jumped up and with a high-powered rifle in his hand ran toward the car and said, "You son of a bitch, I told you not to step on my property". Deceased, who was still in the back seat of the automobile said, "Sir, I am not on your property." Before deceased finished making that statement defendant fired the rifle, hitting deceased in his neck. Deceased said nothing to defendant except the statement aforesaid and never got out of the car.

Defendant then pointed the rifle at Helma Wilson, who was outside of the automobile, and said, "Get the hell out of here or I will kill you all." The Wilsons

got back into the car and drove away. Deceased died from the gunshot wound inflicted.

Defendant presented evidence tending to show:

He met Brenda in the fall of 1972 while she was separated from deceased. Brenda and deceased were divorced in January of 1973 and defendant married her in March of 1973.

On 22 July 1973 deceased told defendant that if he ever whipped Richard, or touched him or spoke harshly to him, deceased would kill defendant even if he had to spend 20 years of his life in jail. On several occasions after that defendant tried to carry on casual conversations with deceased, but as deceased was talking there was something about his tone of voice to indicate that he "was ready to explode any minute."

In August of 1976 defendant asked his wife to write a letter to deceased telling him not to come to their home. On the day of the shooting, when the car drove up, defendant observed deceased in the car. Defendant picked up his rifle and approached the car with the intention of talking to deceased. Defendant thought that deceased had a pistol and was going to shoot him, thereupon, defendant jerked his rifle around and fired, hoping it would give him a chance to get away.

On cross-examination defendant stated that the only threats made against him by deceased were the incidents in July of 1973, an incident around Christmas of 1973 in which deceased allegedly followed Brenda, a telephone call by deceased to Brenda in August of 1976, and the appearance at defendant's home on the day in question. Defendant admitted that deceased never touched him or shot at him.

On 9 August 1976, at defendant's request, Brenda wrote deceased a letter telling him to stay away from defendant's property. There after deceased telephoned Brenda and stated, ". . . I can shoot too and I can shoot pretty damn good. . ."

The jury returned a verdict finding defendant guilty of second degree murder and from judgment imposing a prison term of not less than 30 nor more than 35 years, he appeals.

Attorney General Edmisten, by Associate Attorney

Norma S. Harrell, for the State.

Winston, Coleman and Bernholz, by Barry T. Winston, for defendant appellant.

BRITT, Judge. Defendant assigns as error the failure of the trial court to grant his motion for a continuance of the trial on the ground that his principal attorney was engaged in the trial of another case and could not be present.

On 22 December 1976 Attorney Barry T. Winston of Chapel Hill, N.C., filed a motion in this cause stating that he was counsel of record for defendant; that he was advised that the district attorney had calendared this case for trial on Monday, 3 January 1977; that defendant was free on bond; that he (Attorney Winston) had been appointed to represent one Haskins in Orange County Superior Court for attempted armed robbery; that Haskins was in jail, unable to make bond, and did not want a continuance of his case; that the Haskins case was calendared for trial in Orange County on January 1977; that this case (Williams) had been continued once before at counsel's request because of a similar conflict; that the district attorney had refused to agree to a further continuance; that counsel would be able to appear at the 14 February 1977 Session of Wilkes Superior Court and would be ready for trial at that time.

The case was called for trial by the district attorney during the week of 3 January 1977, evidently on 5 January 1977. At that time defendant's attorneys, Messrs. Max Ferree and John Hall of the Wilkes County Bar, were present. Mr. Ferree asked for a continuance on the grounds set forth in Mr. Winston's motion. He stated that he had talked with Mr. Winston over the telephone the night before; that Mr. Winston advised him that the Haskins trial was in its second day and would probably consume the remainder of the week. Mr. Ferree further stated that defendant's decision to employ Mr. Winston was without any suggestion from Mr. Hall or him, but that they readily agreed for Mr. Winston to appear with them in the case.

The district attorney opposed the motion for continuance, stating that the case had been continued once before on the same grounds. He pointed out that

defendant had able representation in Messrs. Ferree and Hall; that this was the fourth time witnesses had travelled 197 miles to testify in the case, at considerable financial loss to them.

After stating that he felt that defendant was ably represented by Messrs. Ferree and Hall, the trial judge denied the motion for continuance.

Included in the record on appeal is an affidavit by Judge Hobgood, dated 4 April 1977, stating that he was the presiding judge at the 3 January 1977 Session of Orange Superior Court; that Haskins trial began on the first day of the session and ended on Friday; that on Wednesday, 5 January, at the request of Mr. Winston, he attempted to call Judge Crissman on the telephone; that the lady who answered the telephone advised that Judge Crissman was on the bench; that he requested the lady to write Judge Crissman a note informing him of the call and that Mr. Winston was engaged in the trial of a case in Orange County; and that the lady returned to the telephone a short while later and stated that Judge Crissman said there "was no problem," that he was proceeding with the Williams trial without Mr. Winston.

Also included in the record is an affidavit by Attorney Winston dated 4 April 1977 stating, among other things, that he was privately employed to represent defendant Williams on 4 October 1976; that although Messrs. Ferree and Hall were also employed to represent defendant, neither of them had the opportunity to review his file in the case or the benefit of interviews he had conducted with numerous witnesses.

Although the record does not reveal just when Messrs. Ferree and Hall were employed in the case, all indications are that they were employed prior to the time Mr. Winston was employed.

"A motion for continuance is ordinarily addressed to the sound discretion of the trial court and its ruling thereon is not subject to review absent abuse of discretion. State v. Baldwin, 276 N.C. 690, 174 S.E. 2d 526 (1970); State v. Stinson, 267 N.C. 661, 148 S.E. 2d 593 (1966). However, if the motion is based on a right guaranteed by the federal or state

constitution, the question presented is one of law and not of discretion and the decision of the court below is reviewable. State v. Phillip, 261 N.C. 263, 134 S.E. 2d 386, cert. denied 377 U.S. 1003, 12 L. Ed. 2d 1052, 84 S. Ct. 1939 (1964). . ." Justice Huskins in State v. Miller, 288 N.C. 582, 587, 220 S.E. 2d 326, 331 (1975).

Defendant argues that since he is financially able to employ counsel of his choice, he has a constitutional right to be represented by any duly licensed attorney he might employ. Assuming, arguendo, that this is generally true, we think there have to be certain limitations. Were the right unlimited, conceivably all persons charged offenses in North Carolina, or within a given area of the State, and able to employ their own counsel, could agree to employ one particular attorney and thus completely frustrate the trials of criminal cases.

We do not believe this is a right without limitation. We think a reasonable line must be drawn between the rights of defendants to be represented by counsel of their choice, and the rights of society to have the many criminal courts of the State operated with a reasonable degree of efficiency. That being true, considerable discretion has to be vested in the trial judge who is on the scene and has the superior vantage point to view and consider the merits of a particular case.

As of the time of the trial of the case at hand, Judge Crissman had presided over many sessions of criminal court in Wilkes County. He was well acquainted with the various lawyers at that bar, particularly with Messrs. Ferree and Hall, and was well qualified to pass upon their abilities to provide defendant with proper representation. While another judge might have ruled differently on defendant's motion for a continuance, we fail to perceive that Judge Crissman abused his discretion or deprived defendant of his constitutional right to be represented by competent counsel at his trial.

We think the case at hand is easily distinguished from the recent case of State v. McFadden, 292 N.C. 609, 234 S.E. 2d 742 (1977), cited by defendant.

In that case the Supreme Court ordered a new trial where the trial court denied defendant's motion for a continuance on the ground that defendant's retained counsel was engaged in the trial of a case in federal court. In McFadden, it was shown that on the day the case was set for trial retained counsel's junior associate appeared and moved for a continuance; that the court ordered the trial to proceed, requiring said associate to represent defendant although he had practiced law only 18 months, had previously tried only one jury case, knew nothing about the case until 90 minutes before trial, and defendant insisted on his retained counsel being present. In the case at hand the two attorneys who represented defendant at trial were proven advocates of many years' experience, who had been employed by defendant for several months prior to the trial and had every reason to be thoroughly familiar with the case.

Defendant's first assignment of error is overruled.

Next, defendant assigns as errors the trial court's exclusion of evidence tending to show the attitude of deceased as perceived by defendant and the number of occasions on which deceased had assaulted Brenda. We find no merit in these assignments. The record fails to disclose what the answers to the questions would have been, therefore, defendant has failed to show prejudicial error. State v. Miller, supra.

By the next assignment of error argued in his brief, defendant contends the court erred in sustaining the State's objection to a question asked Dr. Rollins, a psychiatrist, as to whether he considered defendant a reliable informant. We find no merit in this assignment. We think the evidence was properly excluded on the ground that it invaded the province of the jury, it being their function to determine the credibility of a witness. See State v. Carr, 196 N.C. 129, 144 S.E. 698 (1928); State v. Metcalf, 18 N.C. App. 28, 195 S.E. 2d 592 (1973).

By his next assignment of error, defendant contends the trial court erred in excluding opinion testimony by Dr. Rollins as to what might or could have prompted defendant to kill deceased. We find no merit in this assignment.

Defense counsel propounded to Dr. Rollins a long hypothetical question which concluded by asking if he had an opinion as to what might or could have prompted defendant to kill deceased. In the absence of the jury Dr. Rollins replied that in his opinion defendant might or could have been acting out of fear of deceased, that defendant's perception and judgment might or could have been impaired by the stress of the situation, and that defendant might or could have felt that he was acting in self-defense. Here again we think the answer would have invaded the province of the jury and that the trial court did not err in excluding the testimony. *State v. Carr*, *supra*.

Defendant assigns as error the following instruction to the jury:

"If the State proves beyond a reasonable doubt that the defendant intentionally killed Jimmy Lee Wilson with a deadly weapon or that he intentionally inflicted a wound upon Jimmy Lee Wilson with a deadly weapon that proximately caused his death, you may but you need not infer, first, that the killing was unlawful and, second, that it was done with malice, and if nothing else appears the defendant would be guilty of second degree murder."

We find no merit in this assignment.

Defendant argues that the holding of *State v. Hankerson*, 288 N.C. 632, 220 S.E. 2d 575 (1975), should be further refined to disallow an inference of unlawfulness unless appropriate guidelines are provided to the jury. We find this argument unpersuasive and hold that the instruction was free from error.

Finally, by the last assignment of error argued in his brief, defendant contends the court in its jury charge did not properly correlate the defendant's apprehension of death or great bodily harm with the evidence of the violent character of the deceased, and the evidence of prior threats made by the deceased toward the defendant. Suffice it to say, we have carefully reviewed the jury charge relating to this

contention but conclude that the charge was not erroneous and that the assignment is without merit.

For the reasons stated, in defendant's trial and the judgment entered, we find

No error.

Judges HEDRICK and MARTIN concur.

A TRUE COPY

Clerk of the Court of Appeals
of North Carolina

By Sheri L. Jewett, Deputy Clerk
November 18, 1977

SUPREME COURT OF NORTH CAROLINA

Fall Term 1977

STATE OF NORTH CAROLINA) Judgment dismissing
v.) appeal on Motion of At-
ROGER WILLIAMS) torney General and
) denying Petition for
) Discretionary Review
) 7723SC423

This matter came on to be considered upon Defendant's notice of appeal from the North Carolina Court of Appeals, pursuant to G.S. 7A-30, upon the Attorney General's motion to dismiss the appeal for lack of a substantial constitutional question, and upon Defendant's petition for discretionary review of the decision of the North Carolina Court of Appeals, pursuant to G.S. 7A-31; upon consideration whereof, it is adjudged by the Court in conference this 15th day of December 1977 that the motion to dismiss the appeal be allowed, that the petition for discretionary review be denied, and that it be so certified to the North Carolina Court of Appeals. Petition for stay of execution of judgment was also denied.

It is considered and adjudged further that defendant do pay the costs incurred, to wit: the sum of nine and 00/100 (\$9.00) Dollars and execution issue therefor.

Issued under my hand and the seal of the Supreme Court this 19 day of December 1977.

John R. Morgan
Clerk of the Supreme Court
of North Carolina

cc: North Carolina Court of Appeals

Mr. William F. Larimer, Attorney at Law
Ms. Norma S. Harrell, Associate Attorney

**Mr. Wayne Yates, Clerk of Superior Court
Mr. Donald K. Tisdale, District Attorney**

STATE OF NORTH CAROLINA) File # 76 Crs 6507
County of Wilkes) Film #
The State of North Carolina) In the General
vs.) Court of Justice
Roger Williams) Superior Court
) Division

JUDGMENT AND COMMITMENT

In open court, the defendant appeared for trial upon the charges of Murder and thereupon entered a plea of Not Guilty.

Having been found guilty of the offense of Murder in the 2nd Degree which is a violation of and of the grade of Felony.

It is ADJUDGED that the defendant be imprisoned for the term of Thirty (30)to Thirty-Five (35) years in the State Prison to be assigned to the State Department of Correction.

It is ORDERED that the Clerk deliver two certified copies of this judgment and Commitment to the Sheriff or other qualified officer and that said officer cause the defendant to be delivered, with such copies as commitment authority, to the appropriate official of the State Department of Correction.

This 7 day of January 1977.

Walter E. Crissman
Presiding Judge

Attorney for Defendant: Max Ferree and John Hall
Attorney for the State: Michael Ashburn

Date certified copies of judgment delivered to Sheriff for commitment: